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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,050	09/05/2003	Susan E. Rice-Lincoln	03137	9383
30114	7590	06/10/2004		
MERONI + MERONI P.O. BOX 309 BARRINGTON, IL 60011				
			EXAMINER MENDIRATTA, VISHU K	
			ART UNIT 3712	PAPER NUMBER

DATE MAILED: 06/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/656,050

Applicant(s)

RICE-LINCOLN, SUSAN E

Examiner

Vishu K Mendiratta

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>9/5/03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 23,24 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not clear what is meant by "activity" being "stress ball" or "clay". It is not clear whether applicant is providing an apparatus or a method.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-8,13-18,21,22,25,26 rejected under 35 U.S.C. 103(a) as being unpatentable over Cruz (52519004) in view of Rockburn (5816819).
Cruz teaches a method of playing a board game (Fig.1), advancing to a colored space (21,22,23,24) by rolling a die (3:20-30), selecting a corresponding card (3:39-42), performing an activity (abstract), allocating points for successfully performing (3:49-50) and winning by having a predetermined number of points. Applicant's limitation "allocating token " can be broadly and reasonably interpreted as "allocating points". Applicant may however argue that Cruz does not teach tokens as in playing pieces.

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Rockburn teaches allocating tokens for successfully completing a task (abstract) and winning by collecting most tokens (745-46).

Allocating tokens is a common and art recognized scoring method that eliminates remembering point scores and in turn avoids any confusion in playing the game.

In order to play the game in an orderly manner, it would have been obvious to use tokens instead of points. One of ordinary skill in art at the time the invention was made would have suggested using scoring method by allocating tokens for playing the game in an orderly manner.

Applicant might argue that the spaces are not colored as claimed. Ex. Parte Breslow 192 USPQ 431 teaches that the difference between the applicant's board and the cited reference resides in meaning and information conveyed by the printed matter are not considered patentable.

One of ordinary skill in art at the time the invention was made would have suggested colored spaces for identification without changing the functionality of spaces.

5. Claims 9-12,19,20,23,24 rejected under 35 U.S.C. 103(a) as being unpatentable over Cruz in view of Rockburn as applied to claims 1,14 above, and further in view of Mueller (4986757).

Cruz and Rockburn teach all limitations except that they do not provide exercise elements. Mueller teaches providing exercise elements for playing a game (2:43).

In order to conduct a physical exercise, it would have been obvious to provide exercise equipment. One of ordinary skill in art at the time the invention was made would have

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provided exercise equipment. Providing a stress ball or clay is a matter of choice and does not change the method of playing spirit.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vishu K Mendiratta whose telephone number is (703) 306-5695. The examiner can normally be reached on Mon-Fri 8AM to 5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris H Banks can be reached on (703) 308-1745. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Vishu K Mendiratta
Primary Examiner
Art Unit 3712

VKM
June 7, 2004